

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-447

December 20, 2001

CENTRAL MAINE POWER COMPANY, ET AL.
Request For Waiver From the Reorganization
Approval Requirements in 35-A M.R.S.A Section 708

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we grant an exemption from the approval requirements of 35-A M.R.S.A. § 708, subject to certain exceptions, for Energy East Corporation (Energy East) and its Maine-based utility affiliates (and their parent companies).

II. BACKGROUND

On June 28, 2001, Central Maine Power Company (CMP) and its affiliates, Maine Natural Gas Corporation (MaineGas), MaineCom Services (MaineCom), Maine Electric Power Company, Inc. (MEPCO), NORVARCO, and Chester SVC Partnership (Chester) (together referred to as the Applicants) requested that the Commission grant an exemption from the reorganization approval requirements of 35-A M.R.S.A. § 708 for “reorganizations” that do not affect the Applicants. The Applicants are Maine utilities and “affiliated interests” (as defined in 35-A M.R.S.A. § 707) of Energy East and its subsidiaries. CMP is a wholly-owned subsidiary of CMP Group, Inc. which in turn is a wholly owned subsidiary of Energy East Corporation (Energy East), a New York public holding company which owns subsidiaries in Maine, New York, Connecticut, Massachusetts, and New Hampshire. CMP owns a majority interest in MEPCO. NOVARCO is a wholly-owned subsidiary of CMP. MaineCom is a wholly owned subsidiary of CMP Group. Maine Gas is a wholly-owned subsidiary of Energy East Enterprises, Inc., a wholly-owned subsidiary of Energy East.

NORVARCO holds a 50% general partnership interest in Chester SVC Partnership, which owns a static var compensator facility in Chester, Maine. The facility provides transmission system reinforcement that allows the Hydro-Quebec Phase II transmission line in New Hampshire and the MEPCO line to operate at full capacity simultaneously.

Under section 708, the Applicants need Commission approval if Energy East or any of its affiliates acquires a 10% or more interest in any other company or if they

transfer, increase or decrease their ownership interest in any company in which they have a 10% or more ownership interest.¹ According to the Applicants, this could result in unnecessary delays and uncertainties when the type of interests intended to be protected under Section 708 are not implicated. The Applicants seek to be exempted from section 708 with four major exceptions that relate to the “restructuring” of the Applicants or Energy East. This exemption is similar to those granted to several Maine telephone utilities. See *e.g.*, *Community Service Telephone Co., Request for Exemption from Required Approvals of Certain Reorganizations Under 35-A M.R.S.A. § 708*, Docket No. 98-973 (May 11, 1999) (CST Order).

On July 5, 2001, the Commission sought comments from interested persons on the Applicants’ request. On July 18, the Industrial Energy Consumers Group (IECG) filed a petition to intervene and comments. On July 19, the Public Advocate (OPA) filed comments.

By Order dated August 8, 2001 in this proceeding, we granted an exemption for the pending Energy East and RGS Energy merger from the reorganization approval requirements of 35-A M.R.S.A §708 (Section 708) pursuant to the Commission’s authority set forth in Section 708(2)(A). However, we postponed a decision on a general exemption for certain reorganizations that do not have an effect on the Applicants, and directed the Staff and Applicants to continue working to craft a more narrow general exemption from Section 708.

As a result, the Applicants submitted a revised request for exemption dated September 25, 2001, (revised request) that clarifies that restructurings of all corporate parent entities of Maine public utility companies, direct or indirect, still require Commission approval. Furthermore, in order to further narrow the general exemption, the Applicants’ revised request defines “Applicants” for the purposes of this exemption to include the current Energy East Maine public utility subsidiaries and any future Energy East subsidiary that qualifies as a Maine public utility company. The Applicants also define a “subsidiary” of an Applicant as an entity in which an Applicant, directly or indirectly through one or more intermediate entities, controls more than 10%² of the voting securities and a “parent entity” of an Applicant as an entity that, directly or indirectly through one or more intermediate entities, controls more than 10% of the voting securities of an Applicant. With respect to Energy East or any parent company of

¹For example, Energy East recently entered into an agreement with RGS Energy Group, Inc. (RGS) whereby RGS will become a wholly-owned subsidiary of Energy East and an affiliated interest of the Applicants. Under Section 708, this acquisition would require Commission approval, even though the effect on the Affiliates will be remote. As discussed *infra*, we granted an exemption for this transaction earlier in this proceeding.

²The Applicants have orally consented to revise their request so that the ownership threshold is consistent with the language in 35-A M.R.S.A. § 708 and thus the request should be stated as “10% or more” rather than “more than 10%” as originally stated by the Applicants.

an Applicant, the Applicants propose that restructuring means the consolidation, merger, transfer of ownership or control, dissolution or termination, in whole or in part, of Energy East or any other direct or indirect parent company of an Applicant accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of 10% or more of the voting securities of Energy East or other direct or indirect parent entity of an Applicant.³

The IECG did not comment on the Applicants' revised request. The Public Advocate's concern was that in granting the Applicants' request the Commission not foreclose discovery on any aspect of an Energy East affiliate's operations, such as a share of common costs in the holding company structure. The Applicants agreed that this exemption to certain reorganization approvals under section 708 does not limit the Commission's ability to obtain information from Energy East or an affiliate. Such access was, and remains, a condition of the CMP Group and Energy East merger. The Applicants and Public Advocate agreed to a Stipulation, dated October 17, 2001, (Stipulation) that addressed these issues. The IECG did not file comments opposing this Stipulation.

The Commission considered the Stipulation during deliberations on November 5, 2001. While the Stipulation overall appeared reasonable, the Commission directed the Staff to address a few remaining concerns with the Applicants before approving the revised request, and thus rejected the Stipulation at that time. Based on these further discussions, we believe the waiver request as further revised by the terms of this Order and with the consent of the Applicants is in the public interest and is thus approved.

III. DISCUSSION AND DECISION

Under Section 708(2), all reorganizations are subject to Commission approval unless exempted by rule or order. Reorganization is defined very broadly as:

any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply.

35-A M.R.S.A. § 708(1)(A).

An "affiliated interest" is defined as:

³As discussed *infra*, the Applicants have agreed to the Commission's request that this percentage be decreased to 10%.

- (1) Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility;
- (2) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1);
- (3) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;
- (4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, provided that the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or
- (5) Any public utility of which any person defined in subparagraph (1) to (4) is an affiliated interest.

35-A M.R.S.A. § 707(1)(A).

Thus, under a holding company structure, if a holding company of a public utility holds a 10% interest in another company, that other company is an affiliated interest of the public utility, even though it may be in a different line of business or its operations may have no direct impact on the public utility. In the past, we have granted broad exemptions from the approval requirement, subject to important exceptions that we have found adequately protect ratepayers of the public utility. See e.g., *New England Telephone and Telegraph Company, Investigation into Reasonableness of Rates*, Docket No. 86-224, Order Approving Affiliated Interests Stipulation (July 16, 1993); *Unitel, Inc., Request for Exemption from Required Approvals of Certain Reorganizations Under 35-A M.R.S.A. § 708*, Order Granting Exemption (Sept. 8, 1998); *Community Service Telephone Company, Request for Exemption from Required Approvals of Certain Reorganizations Under 35-A M.R.S.A. § 708*, Docket No. 98-973, Order Granting Exemption (May 11, 1999). Typically, these exemptions have exempted "all" reorganizations except for a group of specified restructurings. The term "restructuring" is not defined in the statute, but instead has been defined in the order (or in some cases a stipulation) approving the exemption and exceptions to the exemption.

In these orders, "restructuring" has been defined in much the same terms as the statutory definition of "reorganization," i.e., "the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination . . . accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of more than 10% of . . ." Under the statutory definition of "reorganization," however, if one of the named events involves a remote affiliated interest of the public utility (e.g., a separate subsidiary of the parent holding company that does business in another state),

a “reorganization” of the public utility has taken place. By contrast, a “restructuring” occurs only if the described events involve the particular described entity.⁴

The Applicants here request a general exemption from the approval requirements of Section 708 for any “reorganization” except for:

- 1) a restructuring of any Applicant itself;
- 2) a restructuring of a subsidiary of an Applicant;
- 3) a restructuring resulting in the creation of an affiliated interest of any Applicant where it is intended that the affiliate will either enter into a contract or arrangement to furnish goods used by any applicant or perform activities formerly or simultaneously performed by any Applicant; or
- 4) a restructuring of Energy East or any other parent entity of an Applicant.

The Applicants propose that this exemption define “Applicants” to include the current Energy East Maine public utility subsidiaries and any future Energy East subsidiary that qualifies as a Maine public utility company. The Applicants also propose that this exemption define a “subsidiary” of an Applicant as an entity in which an Applicant, directly or indirectly through one or more intermediate entities, controls 10% or more of the voting securities and a “parent entity” of an Applicant as an entity that, directly or indirectly through one or more intermediate entities, controls 10% or more of the voting securities of an Applicant.

The Applicants propose that we use the term “restructuring” in this Order, as we have in prior orders, to describe a range of activities that is narrower than those included in the statutory term “reorganization”: “Restructuring” means the creation, consolidation, merger, liquidation, transfer of ownership or control, dissolution or termination, in whole or in part, of the public utility (i.e. Applicant) itself or a corporation or entity described in subparagraphs (2), or (3) above, accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of 10% or more of the utility’s, corporation’s or entity’s voting securities by one person or two or more persons acting in concert. With respect to Energy East or any other direct or indirect parent entity of an Applicant in subparagraph (4), the Applicants propose that restructuring means the consolidation, merger, liquidation, transfer of ownership or control, dissolution or termination, direct or indirect, in whole or in part of Energy East or other direct or indirect parent entity of an Applicant accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of 10% or more of the voting securities of Energy East or other direct or indirect parent entity of an Applicant by one person or two or more persons acting in concert.

⁴The Applicants have not sought exemption from and would remain subject to the Commission’s jurisdiction regarding the transfer of utility property under 35-A M.R.S.A. §1101.

The Applicants have not requested an exemption under 35-A M.R.S.A. § 707, which requires Commission approval of any contracts or arrangements between a public utility and an affiliated interest of the public utility. The Applicants have stated that the requested exemption under Section 708 will not affect the applicability of Section 707.

We have previously granted exemptions to Section 708 in a manner that maintains our jurisdiction over reorganizations that may financially or operationally impact affiliated Maine public utilities. The Applicants' request is consistent with those prior orders. We granted similar approval to CMP Group, Inc. in approving its holding company restructuring by allowing it to create one or more affiliated interests without additional approval. We also allowed its non-utility affiliates and subsidiaries to create one or more affiliated interests, without additional approval. Initially, we capped the amount that CMP Group, Inc. could invest in non-utility subsidiaries at \$240 million. *Central Maine Power Company, Application for Approval of Reorganization*, Docket No. 97-930 Order at 11,15 (May 1, 1998). We eliminated the investment cap when we approved the CMP Group, Inc. and Energy East merger. *CMP Group, Inc., Request for Approval of Reorganization and Affiliated Interest Transaction*, Docket No. 99-411, Order at 30-31 (Jan. 4, 2000) (Energy East Merger Order).

In this instance, approving requested exemptions does not eliminate or change any of the conditions in the Energy East Merger Order. As noted in the Stipulation submitted by CMP and the OPA, one of the conditions of the merger is that the Commission have access to the books and records of Energy East and its affiliates whose activities relate to or in any way affect the operation, costs or revenues of CMP in Maine. Under the condition, the determination of whether an affiliate's activities relate to or in any way affect the operation, costs or revenues of CMP is in the sole discretion of the Commission. According to the Merger Order, this will allow the Commission to monitor activities to determine whether any improper affiliate transactions or other abuses are occurring. *Energy East Merger Order* at 25. We do not view this condition as "expanding" our authority to approve affiliate transactions. Instead, it makes clear that the Commission retains the authority to examine activities of Energy East and affiliates that might affect CMP. Such review could take place outside the context of a reorganization. We continue to view such access as necessary. Approval of the exemption requested here does not change that condition. Finally, the Commission will require Energy East to seek reorganization approval if Energy East or an affiliate restructures to create an affiliated interest which is intended to act as a competitive energy provider in Maine as that term is defined by 35-A M.R.S.A. §3201(5).

The exceptions to the reorganization approval exemption as proposed by the Applicants, including the broader definitions of "Applicant" and "Subsidiary," attempt to address those reorganization situations that could affect CMP or any of its Maine affiliates. In addition, Energy East has agreed to provide the Commission its annual, quarterly, current and transitional reports filed pursuant to sections 13 and 15(d) of the Securities and Exchange Act of 1934. In this way, we can follow up with any additional inquiries if an affect Maine on utilities is possible.

The requested exemption is essentially the same or more narrow, as described above, than the CST Order. In addition, it includes the requirement that Energy East provide its SEC Forms to the Commission.

The OPA's only concern as expressed in its filing and the Stipulation is that in granting the request we do not foreclose discovery on any aspect of an Energy East affiliate's (e.g., RGS) operations, such as a share of common costs in the holding company structure. We do not intend any action we take here as it relates to approving an exemption to certain reorganization approvals under section 708, to limit our ability to obtain information from Energy East or an affiliate. Such access was, and remains, a condition of the CMP Group and Energy East merger as explained above.

We believe application of the exceptions described in this Order adequately protects the interests of Maine ratepayers. Therefore, we find that the Applicants' request for an exemption is reasonable with the changes we describe in this Order.⁵

Accordingly, we

O R D E R

1. Except as provided in Ordering Paragraph 2 below, the reorganization of Applicants and all entities which presently or in the future are affiliated interests (as defined in 35-A M.R.S.A. § 707) of the Applicants shall be exempt from the requirements of 35-A M.R.S.A. § 708 (and similar successor statutes).

2. The following restructurings (as defined in the text of this Order) shall remain subject to the Commission approval requirements of 35-A M.R.S.A. § 708(2):

- (a) a restructuring of any Applicant itself;
- (b) a restructuring of a subsidiary of an Applicant;
- (c) a restructuring resulting in the creation of an affiliated interest of any Applicant where it is intended that the affiliate will either enter into a contract or arrangement to furnish services or goods to be used by any Applicant or perform activities formerly or simultaneously performed by an Applicant;
- (d) a restructuring of Energy East or any direct or indirect parent entity of an Applicant; and
- (e) a restructuring resulting in the creation of an affiliated interest of any Applicant where it is intended that the affiliate will act as a competitive energy provider in Maine as that term is defined by 35-

⁵Our Order does extend our approval authority to a restructuring resulting in the creation of an affiliated interest of any Applicant where it is intended that the affiliate will act as a competitive energy provider in Maine. Although this was not included in the Applicants' proposal, the Applicants have indicated that they do not object to it.

A M.R.S.A. §3201(5). For purposes of this paragraph, restructuring will have the same meaning as it has for purposes of paragraph 2(c).

3. The exemption created by Ordering Paragraph 1 shall be subject to prospective termination or limitation upon Commission order, after notice to the Applicants and an opportunity for hearing.

4. The limited exemption created by Ordering Paragraph 1 applies only to the requirement of 35-A M.R.S.A. § 708(2) that the Commission approve reorganizations. The exemption does not apply to the requirements in 35-A M.R.S.A. § 707(3) that a public utility obtain Commission approval to extend or receive credit or to make or receive a loan to or from an affiliated interest or to make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or to furnish any service or real or personal property other than those enumerated in 35-A M.R.S.A. § 707(3) with any affiliated interest; or to any other provision of Title 35-A. The Commission retains its powers under 35-A M.R.S.A. § 707(2) to inspect books, accounts and records of Applicants or of an affiliated interest that relates, directly or indirectly, to transactions between Applicants and an affiliated interest.

5. Each Applicant shall ensure that no restructuring undertaken by it, by a parent of an Applicant, by Energy East, or any subsidiary of those entities, either individually or in aggregate, materially impairs the ability of an Applicant to obtain capital on reasonable terms.

6. As a condition of the granting of the exemption in Ordering Paragraph 1, Energy East and its affiliates shall not take any action pursuant to the exemption that materially impairs the ability of an Applicant to obtain capital on reasonable terms.

7. Energy East shall provide the Commission its annual, quarterly, current and transitional reports filed pursuant to sections 13 and 15(d) of the Securities and Exchange Act of 1934, at the same time it files those reports with the SEC.

Dated at Augusta, Maine, this 20th day of December, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.